



Public Employees for Environmental Responsibility

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March 22, 2018

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460

Via FOIAonline.gov

RE: FREEDOM OF INFORMATION REQUEST (#1 of 3)

Dear FOIA Officer:

Pursuant to the Freedom of Information Act, 5 U.S.C. 552, as amended, and the Privacy Act, 5 U.S.C. 552a, Public Employees for Environmental Responsibility (PEER) is requesting information contained in agency records concerning U.S. Environmental Protection Agency (EPA). Specifically, we request the following:

- All Memorandum of Agreement (MOA/MOAs) between EPA and the State of Florida or the Florida Department of Environmental Protection (and/or its predecessor state agency), for the administration of the National Pollution Discharge Elimination System (NPDES) in the state of Florida. This request includes all of the NPDES program MOAs, from 1994 to the present, including any current draft MOA for federal FY2018 to FY2022.
- All NPDES program compliance and enforcement agreements between EPA and Florida DEP, from 1994 to the present.
- All agreements, guidance, directives and correspondence, between EPA Region 4 and the Florida DEP or the Florida governor's office or the Florida legislature (including its individual members), regarding inclusion of the economic benefit of noncompliance and ability to pay (BEN/ABEL) in enforcement actions and assessments of civil penalties.

For any documents or portions of documents that you block release due to specific exemption(s) from the requirements of the Freedom of Information Act or any other law, please provide an index itemizing and describing the documents or portions of documents withheld. The index should, pursuant to the holding of Vaughn v. Rosen, 484 F.2d 820 (D.C. Cir. 1973), provide a detailed justification for claiming a particular exemption that explains why each such exemption applies to the document or portion of a document withheld.

To the extent that EPA needs to perform a detailed review, PEER requests that all fees be waived because "disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requestor" (5 U.S.C. 552 (a) (4)(A)):

1. The subject matter of the requested records must specifically concern identifiable operations or activities of the government.

The FOIA request is, by its terms, limited to identifiable operations and activities of EPA and its employees.

2. For the disclosure to be "likely to contribute" to the understanding of specific government operations or activities, the releasable material must be meaningfully informative in relation to the subject matter of the request.

In regard to the MOAs, the requested material would help the public understand how the National Pollutant Discharge Elimination System (NPDES) program is administered by the State of Florida, Department of Environmental Protection. The MOAs are fundamental to the state's administration of the federal delegated program.

And, in the case of the PPAs, the requested material would help the public understand how the development of the performance partnerships simplifies grant administration, provides the opportunity to prioritize the use of these funds as set forth in the PPA, and allows for a reduction in the state and federal resources devoted to grant oversight, reporting, and administration.

The request would also allow the public to understand the extent to which tax dollars are used to implement and administer Florida's NPDES Program.

3. The disclosure must contribute to the understanding of the public at large, as opposed to the understanding of the requestor or a narrow segment of interested persons.

The requested materials would help the public at large to understand the structure, goals, and processes of the NPDES program in Florida, and the development and progress of applications of the program's principles and requirements in its administration by the state. PEER has a long track record of attracting media and public attention to the internal workings of EPA and to state environmental protection agencies, particularly including the state of Florida.

PEER intends to provide the requested information to the general public through —

- Release to the news media;
- Posting on the PEER web page which draws between 1,000 and 10,000 viewers per day; and
- Publication and reference in PEER reports and in the PEER newsletter that has a circulation of approximately 20,000, including 1,500 environmental journalists.

4. The disclosure must contribute "significantly" to public understanding of government operations or activities.

The NPDES program is an essential program element designed and intended to accomplish Congress' stated goals and requirements of the federal Clean Water Act. The requested records are fundamental to the state of Florida's implementation and administration of the NPDES program in accordance with the federal delegation of primary responsibility from EPA to the state of Florida. These fundamental and

essential EPA records will enable the public to understand in significant detail how the NDPES program is being administered by the State of Florida under the federal oversight of the EPA.

5. The extent to which disclosure will serve the requestor's commercial interest.

Disclosure is in no way connected with any commercial interest of the requestors because PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources, and with supporting professional integrity within public land management and pollution control agencies. PEER is designated as a tax-exempt organization under section 501(c)(3) of the Internal Revenue Code.

6. The extent to which the identified public interest in the disclosure outweighs the requestor's commercial interest.

As stated above, disclosure is in no way connected with any commercial interest of the requestors in that PEER is a nonprofit, nonpartisan public interest organization concerned with upholding the public trust through responsible management of our nation's resources and with supporting professional integrity within public land management and pollution control agencies. PEER is designated as a tax-exempt organization under section 501 (c) (3) of the Internal Revenue code.

Please send those sets of records as they are located and copied and available for sending to us. Please do not hold the copies until all are done and ready for sending in response to this request. Thank you.

If you have any questions about this FOIA request, please contact me at (202) 265-PEER (7337), ext.102, or via email at mnixon@peer.org. I look forward to receiving the agency's final response within 20 working days.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Nixon", with a stylized flourish extending to the right.

Michael Nixon

Strategic Programs Director

